IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

OP.No. 4526 of 1999(L)

PETITIONER:

C.O.ITTY MATHEW,
CHERUATHOOR HOUSE, KANIPAYYOOR P.O.,
KUNNAMKULAM, THRISSUR DISTRICT.

BY ADV. SRI.P.K.ASHOKAN

RESPONDENTS:
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1. **THE TAHASILDAR, TALAPPILLY,**
   WADAKKANCHERRY,
   THRISSUR DISTRICT.

2. **THE STATE OF KERALA,**
   REP.BY THE CHIEF SECRETARY,
   TO GOVERNMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ (SR)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NOS.7826/1999 IN CMP. 444/2000 IN OP. 4526/1999

DISMISSED

10.04.2006 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RETURN DT.29.12.95 UNDER SECTION 7 (1) (3) OF THE KERALA BUILDING TAX ACT TO THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE NOTICE DT.8.8.96 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P3:- COPY OF THE ORDER ISSUED BY 1ST RESPONDENT DT. 22.8.1996.

EXT.P4:- COPY OF THE NOTICE DT.22.12.98 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P5:- COPY OF THE REPRESENTATION DT.20.1.99 TO THEN1ST RESPONDENT.

EXT.P6:- COPY OF THE PROCEEDINGS NO.28487(14) DT.30.1.1999 SIGNED BY 1ST RESPONDENT.

/TRUE COPY/

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K.BALAKRISHNAN NAIR, J.

O.P. NO. 4526 OF 1999-L

JUDGMENT

The petitioner constructed a building and it was completed on 6.12.1995. He filed Ext.P1 returns under the Building Tax Act on 29.12.1995. The Tahsildar called the petitioner for a hearing on 21.8.1996, by Ext.P2 notice dated 8.8.1996. He appeared and the tax was assessed as per Ext.P3 assessment order dated 22.8.1996. The petitioner paid the tax. Later, he was called for a hearing on 5.1.1999 by Ext.P4 notice dated 22.12.1998. He was told that the tax is going to be revised, as the rate of building tax was revised by the Government with effect from 29.7.1996, without knowing that, the assessment was made on 22.8.1996. So, the petitioner was informed of the proposal to revise his tax. Feeling aggrieved by the said stand, the petitioner filed Ext.P5 objection. But, without considering Ext.P5, Ext.P6 proceedings have been issued, revising the tax. The petitioner submits, the taxable event is the completion of the building or occupation of the building, whichever is earlier. Both the events happened in 1995. So, the revision of the rate of tax enforced with effect from 29.7.1996 cannot be made applicable to his building.

2. The 1st respondent has filed a counter affidavit, supporting the revised assessment.

3. Heard the learned counsel on both sides. I find considerable force in the submission of the petitioner that the taxable event is the date of completion of the building. Going by the explanation to sub-section (6) of Section 5, the building is complete when it is ready for occupation or has been actually occupied, whichever is earlier. So, the rate of tax prevailing on the date of the taxable event alone can be levied. Accordingly, Ext.P6 is quashed.

The Original Petition is allowed as above.

10th April, 2007. K.BALAKRISHNAN NAIR, JUDGE

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K.BALAKRISHNAN NAIR, J.

O.P. NO.4526/1999-L

JUDGMENT

10.4.2007